



# And So It Goes!

A Quarterly Newsletter from David M. Zacks, Esq.

Too often we think of mediation as a process to financially settle disputes and prevent a full-blown jury trial. It can be so much more. An example can be found in William Bridges' book, *Managing Transitions*. In one chapter he talks about a scenario that was very similar to a real-life situation in which I was involved. The mediation had little to do with money but all about people and how to get people to let go.

A hospital administrator decides to consolidate maternal and pediatric services. The reorganization makes terrific sense from the patient's point of view—and customer service is the name of the game these days! It will also save overhead costs, and cost-cutting is just as important today. So the idea is a real winner. But right now there are two completely different organizations, two different patterns of loyalty, two different career paths, two different sets of procedures. There are even two organizational cultures—one developed from working with adults and one developed from working with children. Each of these differences is a part of the unit members' separate identities. People in both units talk about “us” and “them.” People will have to let go of a whole world of doing and thinking to make the new arrangement work.

I encourage each of you to consider the broader aspects of mediation and how the principles might assist you in representing your clients' interests.

## On the “QT”

*“It is a terrible thing to look over your shoulder when you are trying to lead—and find no one there.”*

—President Franklin Delano Roosevelt

Tip: In mediation it may be better to “effectively” listen instead of leading with your great idea for a resolution.

## Worth Reading

*Elephant Company*, Vicki Constantine Croke  
A *New York Times* bestseller

This is an inspiring story of an unlikely hero and the animals who helped him save lives in World War II. As I read this book it became clear to me that we can learn from the life lessons of elephants. The author describes how the herd selects a leader to assist and lead the elephants across a dangerous river.

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Dominance is not leadership. From animals, Williams said, people could learn about taking “authority without being a bully.” The big tuskers could splash into the water but no one would follow them. What was needed was confidence rather than bravado. In fact, years of experience had taught the uzis that the leader would not be a male. The notion of the wise matriarch remained alive among them. So the riders marshaled the bulls at the rear.

It’s worth remembering that we can learn a lot, not just from others, but from other species as well.

## Going from Better to Best

Last month I was mediating a serious wrongful death case. I was not sure the matter could be resolved as the parties were extremely far apart as we entered a listening session. As the plaintiff talked about the impact of his wife’s death on his life, I noticed the insurance adjuster for the defendant was leaning for-

ward and listening intently. When the plaintiff finished the adjuster asked if he could speak. He stated in the opening session how moved he had been and that it was his desire to get the matter settled.

I realize it is very unorthodox to have your clients speak and the lawyers remain silent but it happened here and it had a dramatic impact, not only on that insurance adjuster, but on the plaintiff as well as his legal team.

The case was settled. It demonstrated to me the importance of human caring and really, really, listening.

## The Last Word

*“Where all think alike, no one thinks very much.”*

—Walter Littmann, American Journalist

*Stay warm, think Spring and remember the Masters is around the corner. —David*